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6 Facsimile: (520) 838-8061
7 Email: barry@brorexlaw.com
8 Attorney for Debtors Antonio Gonzales and Veronica Gonzales

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10
11 IN THE UNITED STATES BANKRUPTCY COURT
12
13 FOR THE DISTRICT OF ARIZONA

14 In re:

15 Antonio Gonzales and Veronica Gonzales,

16 Case No. 4:09-bk-21243-JMM
17 Proceedings under Chapter 13

18 Debtors.

19 U.S. Bank, National Association, as successor
20 trustee to Bank of America, N.A. as successor
21 by merger to LaSalle Bank N.A., as Trustee
22 for Merrill Lynch First Franklin Mortgage
23 Loan Trust, Mortgage Loan Asset-Backed
24 Certificates, Series 2007-3,

25 Adversary Proceeding
26 Case No.: 4:09-ap-01554-JMM

27 Secured Creditor,

28 **COMPLAINT TO DETERMINE VALIDITY
OF CLAIM**

v.

15 Antonio Gonzales and Veronica L. Gonzales,
16 Debtors; Dianne C. Kerns, Trustee. Trustee,

17 Respondents.

18
19 Debtors, Antonio Gonzales and Veronica Gonzales, by and through the undersigned attorney,
20 hereby object to the Claim filed by alleged Secured Creditor U.S. Bank, National Association, as
21 successor trustee to Bank of America, N.A. as successor by merger to LaSalle Bank N.A., as Trustee
22 for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates,
23 Series 2007-3 ("U.S. Bank"), initiate an adversary proceeding to determine the validity of the Claim
24 and show as follows:

25
26 **BACKGROUND**

27 1. Debtors Antonio and Veronica Gonzales filed a bankruptcy petition under Chapter 13 on
28 August 31, 2009.

2. On or about September 15, 2009, by their attorney Mark Bosco of Tiffany & Bosco, P.A., U.S. Bank filed Claim No. 3 in Debtors' case, asserting an obligation secured by a mortgage on real property later identified as being located at 1384 W Pinedale Ave, Bloomington, California and alleging principal owing in the amount of \$342,590.73 and arrearages and other charges totalling \$27,813.71.
3. On September 16, 2009, undersigned counsel sent a letter to counsel for U.S. Bank, informing them that the claim was filed in error as Debtors had no knowledge of any such property and requesting that the claim be withdrawn. A copy of the letter is attached as Exhibit "A".
4. Instead of withdrawing the claim, U.S. Bank filed an Amended Claim Number 3 on September 25, 2009 increasing the alleged amount of arrearages due on the claim.
5. On September 28, 2009, U.S. Bank filed an objection to the Chapter 13 Plan proposed by Debtors on the basis that no provision had been made for paying this obligation.
6. On October 2, 2009 Debtors' attorney sent a second letter to counsel for U.S. Bank, informing them that the property did not belong to Debtors and that they were filing a claim against the wrong party. A copy of the second letter is attached as Exhibit "B".

OBJECTION TO CLAIM

7. Debtors object to the validity of the U.S. Bank Claim.
8. This is an adversary proceeding pursuant to Rule 7001(2) Fed.R.Bankr.P.
9. This is a core proceeding pursuant to 28 U.S.C, § 157(b)(2)(B)(C)(J)(K).
10. The U.S. Bank claim is invalid in its entirety in that Debtors have never owned real property in Bloomington, California, have never granted a security interest in any California real property to U.S. Bank, or any other lender, and have no relationship to the alleged claim.
11. Even a cursory inspection of the Deed of Trust submitted with the U.S. Bank claim, shows that the Borrowers are Antonio and Maria Gonzales, husband and wife as joint tenants. The Debtors in this case are Antonio and Veronica Gonzales.
12. If U.S. Bank had done any checking after being notified of their error, they would have

1 easily been able to discover that the Social Security numbers are different.

2 13. Ironically, at the same time U.S. Bank was alleging a claim against Debtors, the real owners
3 of the California property, Antonio and Maria Gonzales, were attempting to refinance the
4 property but have been unable to do so because of the bankruptcy claim. A copy of a
5 statement sent to Debtors' counsel from the real owner of the California property is
6 attached as Exhibit "C".

7 14. As a result of this frivolous claim, Debtors have been caused unnecessary worry,
8 aggravation and expense, including attorneys' fees to bring this action.

9 15. Additionally, as a direct and proximate result of Claimants' neglect, the non-party owners
10 of the property have been caused considerable angst and damage as there rightful property
11 has been subject to a hold caused by the false accusations of bankruptcy.

12 WHEREFORE, Debtors respectfully request this Court to dismiss the Claim filed by U.S.
13 Bank in its entirety, award debtor reasonable attorneys' fees and such other relief as this Court
14 deems just and necessary under the circumstances.

15
16 Dated: November 24, 2009.

17
18 **THE LAW OFFICE OF BARRY W. ROREX, PLC**

19 By /s/ Barry W. Rorex
20 **Barry W. Rorex, Attorney for Debtors**
21 **Antonio Gonzales and Veronica Gonzales**

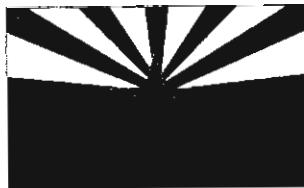
1 A copy of the foregoing was electronically transmitted via ecf
2 and sent by U.S. Mail this 24th day of November, 2009 to:
3

4 Mark S. Bosco
5 Tiffany & Bosco P.A.
6 2525 East Camelback Road
7 Third Floor
8 Phoenix, AZ 85016
9

10 Chapter 13 Trustee
11 Dianne C. Kerns
12 7320 N. LaCholla, #154
13 PMB413
14 Tucson, AZ 85741
15

16 /s/ Barry W. Rorex
17 Barry W. Rorex
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**EXHIBIT
“A”**



LAW OFFICE
OF
BARRY W. ROREX

September 16, 2009

VIA FACSIMILE (602) 255-0192

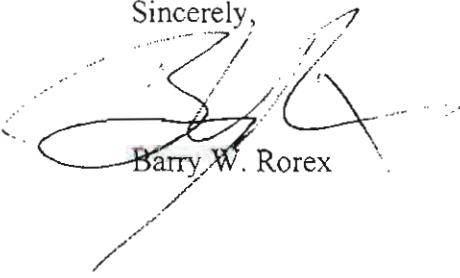
Mark S. Bosco, Esq.
Tiffany & Bosco P.A.
2525 East Camelback Road
Suite 300
Phoenix, AZ 85016

Re: 4:09-bk-21243-JMM
Antonio Gonzalez and Veronica L. Gonzales
Claim #9

Dear Mr. Bosco:

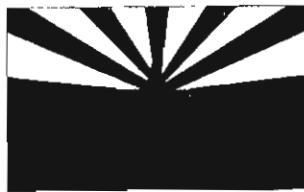
On September 15, 2009 you filed a claim in the above-referenced case on behalf of U.S. Bank. It appears that this claim was filed in error as the subject property was never owned by my clients. I would appreciate your withdrawing the claim at your earliest convenience.

Sincerely,



Barry W. Rorex

**EXHIBIT
“B”**



LAW OFFICE
OF
BARRY W. ROREX

October 2, 2009

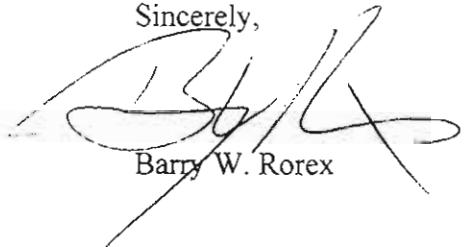
Mark S. Bosco, Esq.
Tiffany & Bosco P.A.
2525 East Camelback Road
Suite 300
Phoenix, AZ 85016

Re: 4:09-bk-21243-JMM
Antonio Gonzalez and Veronica L. Gonzales
Claim #3 (Ammended)

Dear Mr. Bosco:

Your client, Home Loan Services, Inc., continues to send me mail concerning the above-referenced bankruptcy case. Because I believe it would be improper for me to respond directly to the company, I am once again alerting you that your client has filed a claim against the wrong person. My clients do not own the property referenced by Home Loan Services, Inc. As you have now filed an objection to my clients' Chapter 13 Plan, I am filing an Objection to your claim.

Sincerely,



Barry W. Rorex

**EXHIBIT
“C”**

Affidavit

To Whom It May Concern:

This is Antonio Gonzalez I have received a notice from my bank stating that I am in a bankruptcy and that they can not give me my modification because I am in this bankruptcy I need your help in order to clarify this misunderstanding.

My wife has talked to Christy in your office and she wanted me to send you and affidavit,

Please use this letter as and **affidavit** stating that I Antonio Gonzalez is not the same individual as the one stated on the bankruptcy with the number 4:09-Bk-21243-JMM filed on or about August 31, 2009 which is your client.

This is not me I am in California and my SS does end with the 7696 however the other digits are not the same please send proof to my bank that this is not me the person that you are representing.

Information is:

First Franklin Bank (800) 346 6437

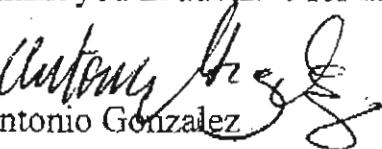
Loan # **1044874668**

1384 Pinedale Ave

Bloomington Ca, 92316

Should you have any questions please feel free to contact me at 562 842-6229

Thank you in advance for all your help in regards to this matter


Antonio Gonzalez